

**RULES GOVERNING ACCREDITATION OF
SPECIALTY CERTIFICATION PROGRAMS FOR ATTORNEYS
(Effective June 1, 1997)**

1.0 Purpose

In order to advertise as a certified specialist, California attorneys must be certified by the Board of Legal Specialization or an accredited entity. The Rules Governing the Accreditation of Specialty Certification Programs for Attorneys set forth the process and substantive requirements for accreditation of certifying entities.

2.0 Definitions

- 2.1 "Accredited entity" is an entity that is accredited by the State Bar of California to certify attorneys as legal specialists.
- 2.2 "Applicant" is a certifying entity that applies to the State Bar of California for accreditation to certify attorneys as legal specialists.
- 2.3 "Certified specialist" is an attorney who is certified by an entity applying for accreditation under these Rules, and whose certificate has not been suspended, revoked or lapsed.
- 2.4 "California component" is knowledge, skill and understanding of California law.
- 2.5 "Specialty field" is a field of the law in which attorneys are or are proposed to be certified as legal specialists.
- 2.6 "Board Committee" is the committee of the Board of Governors with oversight over the Legal Specialization Program.
- 2.7 "Board of Governors" is the Board of Governors of the State Bar of California.
- 2.8 "Board" is the California Board of Legal Specialization.
- 2.9 The "State Bar" is the State Bar of California.
- 2.10 The "Rules" are these Rules Governing the Accreditation of Specialty Certification Programs for Attorneys.

3.0 No Limitation on Number of Entities That May Be Accredited

The number of Specialty fields or number of certifying entities that may be accredited to issue certification in the same or overlapping fields or groups of closely related Specialty fields is not limited.

4.0 Eligibility for Accreditation

To be eligible to become an Accredited entity, an Applicant must:

- 4.1 Demonstrate sufficient financial and organizational resources to implement and maintain its certification program(s) consistent with these Rules on a continuing basis;
- 4.2 Define the Specialty field(s) in which the Applicant certifies or proposes to certify attorneys as spe-

cialists in terms that are understandable to potential users of such legal services, and that will not lead to confusion with other Specialty fields;

- 4.3 Show that a majority of the body responsible for reviewing attorney applications for certification or recertification in the Specialty field consists of attorneys who have substantial involvement in the Specialty field;
- 4.4 Demonstrate that its certification and recertification requirements are not arbitrary, can be clearly understood and easily applied, and that its programs operate in accordance with sections 5.0 through 7.0;
- 4.5 Certify only attorneys who have satisfied each requirement;
- 4.6 Not require attorneys to be a member of, or complete educational programs offered by, the Applicant as a condition for certification or recertification; and
- 4.7 Not discriminate on the basis of race, religion, gender, sexual orientation, disability, or age against any attorneys seeking certification or recertification.

5.0 Minimum Standards for Attorney Certification

An Applicant shall require attorneys to satisfy at least the following minimum standards to become certified:

- 5.1 Substantial involvement. Substantial involvement in the Specialty field throughout the three (3) year period preceding application is demonstrated by performance of a minimum number of designated tasks in the Specialty field, including evidence of a California component to those tasks where appropriate. If the Specialty field is also Board certified, the tasks may not be less stringent than the Board designated requirements. If the Specialty field is not Board certified, the tasks must be of the same or a higher level of difficulty as the requirements in those Specialty fields in which Board certification is available.
- 5.2 Independent inquiry and review. The attorney shall be required to submit a minimum of five references, the majority of which are from attorneys or judges who are knowledgeable regarding the Specialty field and are familiar with the competence of the attorney;

5.2.1 Type of References. The Applicant, not the attorney seeking certification, shall send appropriate forms to potential references, none of whom are persons related to or engaged in legal practice with the attorney. An Applicant also shall reserve the right to seek and consider references in addition to those submitted by the attorney;

5.2.2 Content of Reference Forms. The reference forms shall inquire at least into the reference's field(s) of practice, the

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reference's familiarity with both the Specialty field and the attorney seeking certification, and the length of time that the reference has been practicing law and has known the attorney and the attorney's qualifications, both generally and as a specialist in the Specialty field;

- 5.3 **Written Examination.** Satisfactory passage of a written examination of suitable length and complexity to evaluate the attorney's knowledge of substantive and procedural law in the Specialty field. The examination shall include professional responsibility and ethics as it relates to the Specialty field, along with evidence of a California component to the examination where appropriate. Factors to be used to judge the suitability of the examination include evidence that the examination's pass/fail levels are established in a manner generally accepted as valid and reliable for each form of the examination. Reliability is the consistency or replicability of test results. Validity requires that the content and emphasis of the examination proportionately reflect the knowledge and skills needed for an enhanced level of skill and knowledge in the Specialty field. An Applicant must also provide evidence of periodic review of the examination to ensure relevance to knowledge and skills needed in the Specialty field as the law and practice methods develop over time, and evidence that appropriate measures are taken to protect the security of all examinations;
- 5.4 **Educational Experience.** Within the three (3) years immediately preceding an application, the attorney has completed a minimum of forty-five (45) hours of approved education in the Specialty field. State approved specialty continuing legal education programs in the Specialty field will be deemed to have satisfied this requirement; and
- 5.5 **Current Eligibility to Practice Law.** Attorneys must be admitted and currently eligible to practice law before the bar of any United States Court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or admitted and currently eligible to practice law before the bar of the highest court of a foreign country or any political subdivision thereof.

6.0 Minimum Standards for Attorney Recertification

Applicants must have adopted or made satisfactory progress in developing a plan for recertification of all attorneys previously certified. Certification or recertification shall be valid for five (5) years. While no examination shall be required for recertification, each certified attorney must show continued competence in the Specialty field under the following minimum standards:

- 6.1 **Substantial Involvement.** Substantial involvement in the Specialty field throughout the current certification period is demonstrated by performance of a minimum number of designated tasks in the Specialty field, including a California component of those tasks. If the Specialty field is also

Board certified, the tasks may not be less stringent than the Board designated requirements. If the Specialty field is not Board certified, the tasks must be of the same or a higher level of difficulty as the requirements in those Specialty fields in which Board certification is available;

- 6.2 **Independent Inquiry and Review.** Independent inquiry and review in the same manner as set forth in section 5.2.
- 6.3 **Educational Experience.** During the current certification period, the attorney shall have completed sixty (60) hours of approved education in the Specialty field. State approved specialty continuing legal education programs in the Specialty field will be deemed to have satisfied this requirement; and
- 6.4 **Current Eligibility to Practice Law.** Attorneys must be admitted and currently eligible to practice law before the bar of any United States Court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or admitted and currently eligible to practice law before the bar of the highest court of a foreign country or any political subdivision thereof.

7.0 Applicant Procedural Requirements

- 7.1 Applicants must demonstrate and thereafter maintain a written review process whereby an attorney has the opportunity to challenge a denial of eligibility, a denial of certification or recertification, or suspension or revocation of certification or recertification to an impartial decision-maker. Impartial decision-makers may include persons associated with an Applicant.
- 7.2 Certified specialists shall be required to report professional discipline in any jurisdiction to the Applicant as a condition for continued (re)certification.

8.0 Application for Accreditation

All applications for accreditation must be submitted:

- 8.1 On forms provided by the State Bar;
- 8.2 At the designated office of the State Bar;
- 8.3 With all information, including any supplemental documentation requested;
- 8.4 Accompanied by a list of the names, bar numbers, Specialty fields, and certification periods (beginning and ending dates) of California attorneys applicant has certified;
- 8.5 Accompanied by a list of the names and bar numbers of previously certified California attorneys whose certificates of specialization have been revoked, suspended, modified, or whose certificates have expired without renewal;

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- 8.6 Signed and verified by an authorized representative of the Applicant;
- 8.7 With the appropriate non-refundable processing fee; and
- 8.8 If the Applicant is accredited by the American Bar Association to certify attorneys as legal specialists, it shall be accompanied by proof of such accreditation.

9.0 Evaluation Subcommittee

The "Evaluation Subcommittee" is an ad hoc subcommittee convened to advise and assist the Board in administering the accreditation of specialty certification programs for attorneys under these Rules. It is responsible for conducting an independent evaluation of the qualifications of an Applicant in accordance with sections 4.0 through 7.0 and recommending an action to be taken on applications for accreditation.

- 9.1 The Evaluation Subcommittee shall be appointed by the Chair of the Board Committee and shall consist of up to five members, except when an application is for more than one Specialty field, as follows: a Board member as chair, person(s) knowledgeable in the Specialty field; and person(s) knowledgeable in the administration and the operation of a program which certifies attorneys as specialists. If an Applicant applies for accreditation in more than one Specialty field, an experienced practitioner in each of the fields will be appointed to the Evaluation Subcommittee.
- 9.2 Unless otherwise extended, the Evaluation Subcommittee's responsibility shall end after final decision on an application has been made.
- 9.3 Persons having a conflict of interest as defined in section 20.0 cannot serve on an Evaluation Subcommittee, or otherwise participate in an accreditation matter specifically related to that respective conflict.

10.0 Evaluation Subcommittee Action

- 10.1 The Evaluation Subcommittee shall act by a majority vote within sixty (60) days after receipt of complete applications. The Evaluation Subcommittee's recommendation to the Board must be in writing. Recommendations for denial of accreditation or conditional accreditation must state the reason(s) therefor. The Evaluation Subcommittee shall:
 - 10.1.1 Recommend accreditation with or without conditions, if the Applicant has demonstrably satisfied all the requirements for accreditation as set forth in these Rules; or
 - 10.1.2 Recommend denial if the Applicant fails to satisfy the requirements of these Rules or made material false representations or misstatements of material fact. Written notice of the Evaluation Subcommittee's

recommendation and its reasons, shall be mailed to the Applicant prior to transmitting the recommendation to the Board. The Applicant shall be permitted to withdraw the application or request reconsideration within thirty (30) days after the date listed on the Notice. The request for reconsideration must be in writing, but may be informal (e.g., by letter) and need not be in any particular format. However, it must state clearly and concisely any new or clarifying information addressing the basis for the denial and include all relevant evidence supporting the position of the Applicant. If no response is received within thirty (30) days of the date of the Notice, the recommendation shall be forwarded to the Board; or

- 10.1.3 Request additional information.

- 10.2 Within thirty (30) days following receipt of a request for reconsideration, the Evaluation Subcommittee shall by majority vote:

- 10.2.1 Recommend granting accreditation with or without conditions; or
- 10.2.2 Recommend denial of accreditation.

11.0 Board of Legal Specialization Action

Absent an abuse of discretion, the Board shall approve the recommendation of the Evaluation Subcommittee within sixty (60) days after submission of the recommendation by the Evaluation Subcommittee. The Board shall transmit its recommendation in writing to the Applicant. On finding an abuse of discretion or the discovery of new evidence not considered by the Evaluation Subcommittee, for good cause shown, the Board shall take one of the following actions:

- 11.1 Recommend accreditation with or without conditions;
- 11.2 Recommend denial of accreditation; or
- 11.3 Request additional information.

12.0 Board Committee Action

- 12.1 The Board Committee or its designee shall take one of the following actions by majority vote within thirty (30) days after receipt of the written recommendation of the Board of Legal Specialization:
 - 12.1.1 Accredite the entity with or without conditions;
 - 12.1.2 Deny accreditation; or
 - 12.1.3 Request additional information.
- 12.2 The Applicant shall be notified in writing of the action of the Board Committee with a statement of the basis for the denial, if appropriate. Within fifteen (15) days of the date listed on the Notice, an

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Applicant may request review of the Board Committee's action. The request shall be considered by the Board of Governors or its designee, which may or may not hold hearings as it deems appropriate. The Board of Governors, or its designee, shall make findings of fact and determinations and provide written notice of its action.

13.0 Duration of Accreditation

Accreditation by the State Bar shall commence and remain in effect during the dates indicated on the Notice of Accreditation unless terminated sooner pursuant to the earlier of the following occurrences:

13.1 Termination of accreditation is requested in writing by the Accredited entity and an acknowledgement letter is sent by the State Bar stating the effective termination date; or

13.2 Accreditation is revoked by the State Bar pursuant to section 15.0.

14.0 Advertisement of Accreditation

14.1 In connection with advertisement of the fact of accreditation pursuant to these Rules, an Accredited entity must state in its California advertisement(s):

"Accredited by the State Bar of California to certify attorneys in the specialty areas of (insert specialty field) under the following conditions (insert the conditions if any)"

14.2 In connection with advertising the fact of certification by an entity accredited pursuant to these Rules, an attorney must state in his or her advertisement(s):

"Certified Specialist, (insert specialty field), (full name of the accredited entity)"

14.3 An attorney may, in addition, include in his or her advertisement(s):

"Accredited by the State Bar of California."

14.4 A California attorney shall not hold himself or herself out as being certified by the California Board of Legal Specialization or an Accredited entity unless actually certified by those entities.

14.5 A California attorney certified by an entity whose accreditation is revoked pursuant to these Rules may not advertise certification by that entity in California.

15.0 Revocation of Accreditation

Accreditation by the State Bar may be revoked for the following reasons:

15.1 Accreditation was granted contrary to these Rules or the Applicant made material false representations or misstatements of material fact to the State Bar; or

15.2 The entity no longer meets the requirements for accreditation under sections 4.0 through 7.0 of these Rules; or

15.3 The entity's advertisement(s) are contrary to these Rules.

16.0 Revocation process

The revocation of accreditation by the State Bar pursuant to section 15.0 shall be pursuant to the following process:

16.1 A Notice of Intended Revocation of Accreditation shall be mailed to the Accredited entity setting forth the proposed reasons for the action and describing the process set forth in this section;

16.2 Unless opposed, the action shall be effective ten (10) days from the date on which the State Bar mails the Notice;

16.3 Within ten (10) days of the date of mailing of the Intended Notice of Revocation of Accreditation, the entity may contest the action by sending a written request to the State Bar setting forth the reasons review is sought, and why it should remain accredited with all relevant evidence supporting the objections of the Accredited entity;

16.4 The Board Committee or its designee shall consider the request and may hold hearings as it deems appropriate and shall prepare a written report of its findings of fact and determination and any additional comments as may be appropriate. Notice of the determination and a copy of the report containing the authority for the action and the reasons supporting the decision shall be served by mail upon the Accredited entity;

16.5 Should the outcome of the review permitted by Section 16.4 be adverse to the Accredited entity, the entity may request review by the Board of Governors or its designee. Such request must be in writing, setting forth the reasons review is sought, and include all relevant evidence supporting the request. The Board of Governors or its designee may hold hearings as it deems appropriate, providing notice and an opportunity for the parties to be heard;

16.6 Upon the completion of such consideration, the Board Committee or its designee shall revoke accreditation, request more information, or accredit with or without conditions as the Board of Governors may determine appropriate;

16.7 Within thirty (30) days of its decision, a report containing the authority for the action and the reasons supporting the decision shall be served by mail upon the Accredited entity; and

16.8 During the pendency of proceedings pertaining to revocation of accreditation, the existing certificate of accreditation shall remain in effect, subject to directives from the Board of Governors, the Board

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Committee, or the Board's designee based on appropriate findings.

17.0 Special Reports

An Accredited entity shall report the following changes in writing on a form provided by the State Bar along with the appropriate processing fee:

17.1 A change in the entity's address shall be reported within thirty (30) days of the effective date of the new address; and

17.2 Changes in the entity's qualifications under sections 4.0 through 7.0 shall be reported at least sixty (60) days before the changes are to become effective.

18.0 Annual Renewal

Each Accredited entity shall file an annual renewal. Failure to file shall result in lapse of accreditation.

All annual renewals must be submitted:

18.1 On forms provided by the State Bar;

18.2 With all the information requested on the form;

18.3 With the appropriate processing fee and penalty fee, if appropriate;

18.4 At the designated office of the State Bar;

18.5 Signed and verified by an authorized representative of the accredited entity;

18.6 With a special report, pursuant to section 17.0, if applicable;

18.7 By the date set by the State Bar; and

18.8 With the current status of each accredited program, including the names and current addresses of attorneys certified or recertified as specialists by each program.

19.0 Accreditation Fees

19.1 Application Fee

The application fee for accreditation shall be set by the Board of Governors.

19.2 Annual Renewal Fee

The annual renewal fee shall be set by the Board of Governors and shall be due and payable as indicated on the Renewal form.

19.3 Annual Renewal Fee Late Charges

Annual renewal fees not paid within thirty (30) days after billing shall be delinquent and shall be subject to late charges in an amount to be set by the Board of Governors.

19.4 Duplication Fees

Requests for duplication of materials shall be subject to a reasonable fee to cover the cost of

preparing copies of any application, record, proceeding, or paper on file with the State Bar.

19.5 Program Financing

The application, special report, renewal and duplication fees and/or penalties charged under these Rules shall be set in an amount sufficient to defray the expenses of operating the program.

20.0 Conflict of Interest

The intent of this section is to establish standards and procedures to assist those acting under these Rules in avoiding actual or apparent conflicts of interest which may interfere with their ability to discharge their duties.

20.1 Persons cannot serve on or be appointed to an Evaluation Subcommittee, and a Board or Board Committee member must recuse himself or herself from any and all participation in the consideration of an application or from attempting to influence others with respect to an application, if he or she:

20.1.1 Is presently or has been affiliated previously with the Applicant;

20.1.2 Served as a paid consultant or employee of an Applicant within 2 years prior to being appointed a member of the subcommittee;

20.1.3 Has a personal or professional relationship with a consultant or employee of the Applicant;

20.1.4 Is financially interested in the outcome of the application;

20.1.5 Is personally biased or prejudiced against the Applicant and thereby unable to fairly evaluate evidence and information concerning the Applicant's qualification;

20.1.6 Is a party to pending litigation in which the Applicant is a party.

20.2 The fact that a person represents a party to a legal matter, and a member of an Applicant's board or governing body represents an opposing party, does not require recusal. The person so involved must notify the chair of the committee or subcommittee to give the Applicant the opportunity to request replacement based on a belief of bias or prejudice. Factual determinations must be based solely upon the record presented and not on information extrinsic to the documentation.

20.3 A person who is required to recuse himself or herself shall:

20.3.1 Immediately disclose the disqualifying interest but need not state the reasons therefor;

20.3.2 Withdraw from any participation in the matter of that Applicant; and

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20.3.3 Refrain from attempting to influence another member of the subcommittee, Board or Board Committee.

20.4 If a person does not voluntarily recuse himself or herself, the chair may, upon becoming aware of factors that may indicate a potential conflict of interest, initiate an inquiry as to whether or not such person should be disqualified and take appropriate action.

20.5 Upon selection of an Evaluation Subcommittee, a notice of composition of the Evaluation Subcommittee containing the names of the persons serving on the subcommittee shall be sent to the Applicant.

20.5.1 The Applicant has ten (10) days after service of the Notice to object to any person for conflict of interest;

20.5.2 If the Applicant does not object within ten (10) days, the objection is waived; and

20.5.3 If an objection is made, the Chair of the Board shall respond, unless the Chair of the Evaluation Subcommittee is the subject of the objection. In that case, the Chair of the Board Committee shall respond to the objection.

21.0 Disclosure of Information

Except for the circumstances described below, or otherwise prohibited by law, the files, records and documents submitted by an Applicant as part of the accreditation process will be deemed public information.

Requests for duplication of any application, record, proceeding, or paper on file with the State Bar shall be subject to a reasonable fee to cover costs.

21.1 Notification of the name of Applicants seeking certification shall be circulated after the composition of an Evaluation Subcommittee becomes final. Any person may comment upon the Applicant's qualification. Such comments shall be public and shall be considered as part of the review process.

21.2 Upon good cause shown, an Applicant may request that distribution of its materials by the Board of Governors or by the Evaluation Committee serving at the request of the Board be limited to those persons who need the information to fulfill obligations specified in these Rules.

21.3 Notwithstanding other provisions of these Rules, actual or proposed written examinations submitted to the State Bar will be kept confidential and handled accordingly.